

REMARKS

Claims 1-4, 13-22 and 31-34 are presently pending in the case. Claims 1 and 13 have been amended. The amendments are supported by the specification as originally filed. Reconsideration of the present case in view of the above amendments and the remarks herein is requested.

Allowable Claims

Applicant acknowledges with appreciation the Examiner's indication that claims 31-34 are allowable and claims 16-18, 20 and 22 contain allowable subject matter.

Independent claim 1

The Examiner rejected claims 1-4 under 35 USC §102(b) as being anticipated by U.S. Patent 5,723,189 to Sudo (hereinafter Sudo). The rejection is traversed.

"A rejection for anticipation under section 102 requires that each and every limitation of the claimed invention be disclosed in a single prior art reference." In re Paulsen, 30 F.3d 1475, 1478-79 (Fed. Cir. 1994). "Invalidity on the ground of 'anticipation' requires lack of novelty of the invention as claimed ... that is, all of the elements and limitations of the claim must be shown in a single prior art reference, arranged as in the claim." Karsten Manufacturing Corp. v. Cleveland Golf Co., 242 F.3d 1376, 1383 (Fed. Cir. 2001). Thus, for a rejection under 35 USC §102 to be proper, the reference relied upon must disclose each and every element of the claimed invention and the elements must be arranged as in the claim. Non-disclosure of a single element, feature or limitation of the claim or an arrangement other than that which is claimed negates anticipation.

Sudo does not anticipate independent claim 1. Claim 1 is to a receptacle that is shaped and adapted to be insertable into a dry powder inhaler. This positively recited

feature is not disclosed by Sudo. Instead, Sudo is directed to liquid substances. Even though a powder container is disclosed in Figure 5, that powder is for subsequent dissolution (see column 21 line 50). Therefore, there is no disclosure, teaching or need for a dry powder inhaler. Since Sudo does not disclose each and every feature set forth in claim 1, it does not anticipate the claim. Thus, the Examiner is respectfully requested to reconsider the language of claim 1 and withdraw the rejection thereof under 35 USC §102.

Applicant requests withdrawal of the rejection of claim 1 under 35 U.S.C. §102(b). In addition, Applicant requests withdrawal of the rejection of claims 2-4 which depend from claim 1 and are not anticipated by Sudo for at least the same reasons as claim 1.

Independent claim 13

The Examiner rejected claims 13-15, 19 and 21 under 35 USC §102(b) as being anticipated by U.S. Patent 3,980,074 to Watt et al (hereinafter Watt et al). The rejection is traversed.

Independent claim 13 has been amended above to overcome the rejection. More specifically, claim 13 has been amended to replace the term "enclosed" with the term "sealed." As stated in the prior Board of Patent Appeals and Interferences decision, "Appellant's have *ipsis verbis* support for a 'sealed cavity' (see Spec. 7, I. 26) which would have excluded vents such as those disclosed in Watt" (Page 9, line 3-4). Accordingly, Applicant believes amended claim 13 clearly distinguishes Watt et al. Claims 14, 15, 19 and 21 depend from claim 13 and are also believed to be allowable for at least the same reasons as claim 13.

Conclusion

The claims are allowable for the reasons given above. Therefore, the Examiner is respectfully requested to reconsider the present rejections and allow the presently pending claims. Should the Examiner have any questions, the Examiner is requested to call the undersigned at the number given below.

Respectfully submitted,

JANAH & ASSOCIATES

Dated: February 16, 2010

By: _____



Guy V. Tucker
Reg. No. 45,302

Guy Tucker
Janah & Associates
650 Delancey Street, Suite 106
San Francisco, CA 94107
Phone: (415) 538-1555
Fax: (415) 538-8380